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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff,

and

SEAN REILLY,

Plaintiff Intervenor,

v.

COTTONWOOD FINANCIAL
WASHINGTON, LLC.,

CIVIL ACTION NO. 2:CV-09-5073-
EFS

~~PROPOSED~~ PROTECTIVE ORDER

~~PROPOSED~~ PROTECTIVE ORDER (CV 09-5073-EFS)

1 and

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4 COTTONWOOD FINANCIAL,
5 LTD.,
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7 Defendants.
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18 **I. PROTECTIVE ORDER**
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21 1. **Scope and Purpose of this Order:** This Protective Order shall
22 govern the designation and handling of protected documents produced by any
23 party in discovery in this litigation, whether by voluntary production or disclosure
24 or in response to any formal discovery procedure, including designation and
25 handling of nonpublic information of a confidential nature. This Protective Order
26 does not affect any party's obligations under the Federal Rules of Civil Procedure
27 to produce documents as required by the rules of discovery or an order of the
28 Court. The purpose of this Protective Order is to facilitate the handling of
29 nonpublic information of a confidential or proprietary nature. If a designating
30 party files a "confidential" document (defined below) in court and does not
31 attempt to file it under seal, or if a document is otherwise already part of the
32 public record as of the entry of this Order, the document(s) in question will not be
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1 subject to this protective order. The mere filing of the "confidential" document by
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3 the non-designating party does not remove the document from the protection of
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5 this order. Although it is anticipated that the parties filing documents will comply
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7 with the terms of this Protective order, if a non-designating party files a document
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9 marked "confidential" by the non-filing party, the non-filing party may seek
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11 appropriate relief from the court to ensure protection under this order.
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17 2. **"Confidential Material" includes:**
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19 a. Personnel records pertaining to any current or former
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21 employee of Defendant Cottonwood Financial, Ltd. or Defendant Cottonwood
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23 Financial Washington, LLC (hereafter, "Cottonwood") that contain personal,
24
25 payroll or financial information, e.g., document nos. [CONFIDENTIAL]
26
27 Cottonwood-Reilly 00747-00790. Good cause exists to protect the privacy rights
28
29 of Cottonwood's current and former employees who are not parties to this
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31 litigation. These files include these individuals personal identifying information
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33 and financial account information. No public interest is served by requiring
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35 public disclosure of an individual's private and personal information in a matter in
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37 which he or she is not a party. The Court's December 2007 "Notice of Electronic
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39 Availability of Case File Information" specifically contemplates the protection of
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41 such personal information.
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b. Cottonwood's Operations Manual, *e.g.*, document nos.

[CONFIDENTIAL] Cottonwood-Reilly 00791-01057. Good cause exists to protect Cottonwood's confidential and proprietary business information, which provides it with a business advantage over its competitors. Cottonwood takes significant steps to protect this information in its daily operations, including through the use of non-disclosure and confidentiality agreements with its employees. No public interest is served by requiring Cottonwood to disclose information it strives to maintain confidential and proprietary in its business operations and which would harm its business operations if disclosed.

c. Medical records and healthcare information pertaining to Sean

Reilly, *e.g.*, document nos. [CONFIDENTIAL] Cottonwood-Reilly 00791-01057. Good cause exists to protect the highly sensitive and private nature of Sean Reilly's medical records from nonparty access, including but not limited to the details of treatment that he received for his Bipolar Disorder, and how that treatment affected him. No public interest is served by making these sensitive and private medical records of Sean Reilly publicly available. The Court's December 2007 "Notice of Electronic Availability of Case File Information" specifically contemplates the protection of such medical records for Sean Reilly.

3. **Standard for Protected Documents:** Any person who is required to produce documents or information in discovery in this litigation may designate

~~XXXXXXXXXX~~ PROTECTIVE ORDER (CV 09-5073-EFS)

1 material produced as a protected document(s) pursuant to this Protective Order.
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3 All designations must be based on the good faith belief that the information
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5 constitutes "Confidential Material" as defined above.
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7 4. **Protected Documents:** Protected document(s) are those that contain
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9 "Confidential Material" as defined above, and are marked "CONFIDENTIAL" by
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11 any party. These documents, referred to hereinafter as "protected documents,"
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13 will be covered by this Protective Order and will be used only for the purposes of
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15 this case, and will not be used by any party or his or her counsel for any purpose
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17 unrelated to this case.
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19 5. **Designating Protected Documents:**

20 a. **Marking Protected Documents:** With the exception of medical
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22 records for Sean Reilly that are provided directly by a medical
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24 service provider to Defendants, protected documents shall be
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26 designated as confidential by affixing to them the legend
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28 "CONFIDENTIAL" in a size and location that makes the designation
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30 readily apparent, preferably in the lower right hand corner. Medical
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32 records for Sean Reilly that are provided directly to Defendants by a
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34 medical service provider will be designated as confidential by letter
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36 from Plaintiff Intervenor.
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38 b. **Designating Deposition Testimony:** Any party who has designated
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40 a document as protected pursuant to Paragraph 2 of this Protective
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42 Order may designate testimony concerning that document as
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44 "Confidential Information" at a deposition by making a statement to
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46 that effect on the record at the deposition or other proceeding. When
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48 Confidential Information is designated on the record at a deposition,
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50 the party claiming the testimony is confidential shall make
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1 arrangements with the court reporter taking and transcribing such
2 proceeding to label each page containing the testimony with the
3 designation "Confidential" and to separately bind such pages as
4 "Confidential."
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9 c. **Subsequent Designation:** If a party discovers that, through
10 inadvertence, documents containing Confidential Information have
11 been provided to the opposing party without being properly
12 designated under this Order, the producing party shall promptly
13 notify the receiving party in writing of the error. The notification
14 shall include an identification of the documents or information (by
15 control number or some other specific form of identification), and the
16 receiving party shall affix a stamp identifying each document or item
17 of information so identified as "CONFIDENTIAL" unless the parties
18 agree that some other procedure for remedying the inadvertence is
19 more appropriate under the circumstances.
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31 6. **Maintaining Designated Protected Documents:** Any protected
32 document must be maintained in a manner reasonably calculated to preserve its
33 confidentiality.
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37 7. **Disclosure of Protected Documents:**

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39 a. Except as set forth herein or by any subsequent court order, no
40 protected documents shall be delivered, exhibited, or disclosed to any
41 persons unless done in a manner in compliance with this Protective
42 Order.
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46 b. The parties' counsel shall require all persons, except those referred to
47 in paragraph 7(c), before being given access to any protected
48 document, to read and agree to be bound by this Protective Order by
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1 endorsing the certification attached as Exhibit A. Counsel shall
2 retain this certification.
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5 c. Protected documents may be delivered, exhibited, or disclosed to the
6 following persons subject to the limitations of this Protective Order:
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- 8 i. Counsel representing the named parties in this case and any
9 paralegal, clerical, or other employee of such counsel assisting
10 in the prosecution or defense of this litigation;
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12 ii. Any copying services hired by counsel to copy documents in
13 bulk;
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15 iii. The court or any court personnel;
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17 iv. Any person testifying or attending a deposition;
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19 v. Any person identified as having authored or having previously
20 received the protected document(s);
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22 vi. The parties and their client representatives, insurance carriers,
23 and/or counsel for their insurance carriers for any purpose in
24 this litigation;
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26 vii. Current or former employees or agents whose review a party
27 deems necessary to the presentation or defense of claims in this
28 litigation;
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30 viii. A Mediator(s) retained by the parties; or
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32 ix. Consulting experts or expert witnesses whose review a party
33 deems necessary to the presentation or defense of claims in this
34 litigation;
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47 d. A party that files with the Court materials designated as Confidential
48 Information under Section 2(a) or 2(c) of this Protective Order
49 (Personnel Records or Medical Records) or any pleading or
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1 memorandum purporting to reproduce such information, and who
2 seeks to have the record containing such information sealed, shall
3 submit to the Court a motion to seal, pursuant to Local Rule CR 7.1.
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7 e. A party that files with the Court materials designated as Confidential
8 Information under Section 2(b) of this Protective Order
9 (Cottonwood's Operations Manual) or any pleading or memorandum
10 purporting to reproduce such information, shall seek to have the
11 record containing such information sealed, and shall submit to the
12 Court a motion to seal, pursuant to Local Rule CR 7.1.
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18 f. This Protective Order does not apply to information obtained by or
19 made available to any such person by means other than the discovery
20 provisions of the Federal Rules of Civil Procedure, and except for
21 good cause shown, such information need not be filed under seal
22 when submitted to the Court.
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29 8. **Producing Party's Use of Protected Documents:** Nothing in this
30 Protective Order limits a producing party's use of its own documents or
31 documents obtained through means other than discovery requests or subpoenas in
32 this litigation. Such disclosures shall not affect any confidential designation made
33 under the terms of this Protective Order.
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39 9. **Disputes as to Confidentiality Designation:**

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41 a. **Meet and Confer Requirement:** The parties agree to designate
42 information as "Confidential" on a good faith basis and not for
43 purposes of harassing the receiving party's access to information
44 concerning the lawsuit. If any party believes that a document,
45 tangible item or other information that has been designated as
46 Confidential is not entitled to be treated as Confidential, the party
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will notify the designating party of its objection to the Confidential designation. The parties shall meet and confer in an attempt to reach an agreement regarding the confidential status of the document, tangible item or information within five (5) business days after the objecting party has advised the designating party of its objection.

b. **Motion for Protective Order:** If the objection is not resolved, and if the objecting party notifies the designating party in writing of its intent to disclose the information as well as the person and/or entity to whom it intends to make such disclosure, then the designating party shall have five (5) business days after receipt of such written notification to file a motion to have the document or information treated as Confidential; if such motion is not timely filed, then the objecting party may, for purposes of this case only, make the indicated disclosure.

c. **Status Pending Resolution of Dispute:** Any disputed document or other material must be treated as a protected document under this Protective Order until entry of a court order ruling otherwise.

10. **Rights of Parties:** This Protective Order is without prejudice to the right of any party to apply to the Court for any further protective order relating to any confidential information or for an order permitting disclosure of any confidential information beyond the terms of this Protective Order.

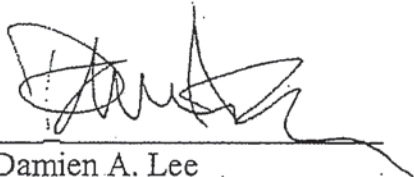
Dated this 1st day of July, 2010.

s/ Edward F. Shea

THE HONORABLE EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

XXXXXX
[PROPOSED] PROTECTIVE ORDER (CV 09-5073-EFS)

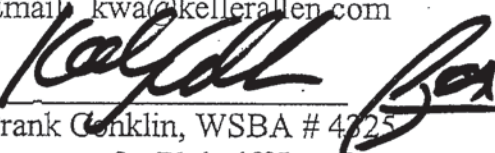
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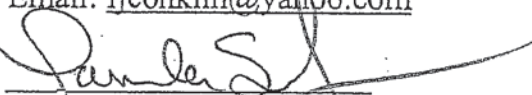
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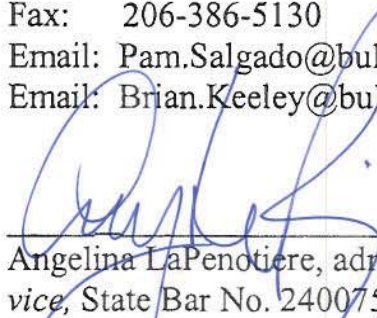
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Exhibit A

I, _____, certify that I have received and read a copy of the Protective Order in *EEOC et al. v. Cottonwood Financial, Ltd., et al*, United States District Court, Eastern District of Washington, CV 09-5073-EFS. I agree to be bound by it. I further understand that any protected document and any notes, memoranda or other form of information derived from it, may not be used, copied or disclosed by me to anyone else except in strict accordance with the Stipulated Protective Order and then only for the prosecution and defense of this litigation.

Dated this ____ day of _____, 2010__, in _____, Washington.
